

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF OREGON

3 THE HON. MICHAEL J. McSHANE, JUDGE PRESIDING

4
5 UNITED STATES OF AMERICA,)

6 Government,)

7 vs.)

No. 6:14-cv-00482-MC-1

8 DANIEL STEPHEN JOHNSON,)

9 Defendant.)

10 _____)

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13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 EUGENE, OREGON

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TRANSCRIPT OF PROCEEDINGS

(May 9, 2018)

(In open court; outside the presence of the jury:)

THE COURT: All right. Let's go on the record. We have some preliminary evidentiary matters to discuss. I have reviewed the government's motion to admit statements of Gary Johnson pursuant to FRE 801(d)(2)(e).

Does The defense wish to be heard?

MR. WEINERMAN: Yes, Judge. We apologize for not submitting something in writing, but it was a late filing.

So, Judge, our understanding -- and I just shared with Counsel a case which maybe the Court should be familiar with. Some of my arguments would be based on this case of *United States v. Ermoian*, E-r-m-o-i-a-n, 752 F.3d at -- well, at 1165. It's a case -- let me back up.

Our -- our belief is that for this -- for a chat or an email between GaryDonna and somebody else, in which Mr. Johnson is not a party to, is only admissible if the government can show by preponderance of the evidence that there was -- that the elements of the underlying offense, which seems to be witness tampering, 18 U.S.C. 512, had been established.

So the first issue is is this an official proceeding? And when GaryDonna is having these chats with various people, other than Daniel Johnson, they occurred at various times. And I think you have to look at what they were talking about and

1 when. There were three proceedings going on. There was a
2 Cambodian prosecution that was going on from on or about
3 January 2014. The Court knows the result of that. That was --
4 the trial verdict was entered in June of 2014 and then there
5 was an appeal, so there was still litigation going on and
6 attempts to deal with that. We feel that a Cambodian
7 prosecution is not an official proceeding under United States
8 law. The definition of "official proceeding" is set out in the
9 statute. It's cited in the case cite I just mention to the
10 Court. The *Ermoian* case. I believe it's at
11 18 U.S.C. 1515(a)(1). It lists a number of different
12 activities that constitute official proceedings. And all of
13 them are proceedings before a tribunal, a court, an agency. It
14 does not include investigations.

15 So I think the first thing the Court has to do is
16 separate. Cambodian prosecution was not an official proceeding
17 under federal law. Second, there's talk about what was going
18 on in Lincoln County. The case that was pending there and
19 attempts to deal with that case is also not an official
20 proceeding under federal law. It has to be -- there has to be
21 a nexus to a federal proceeding, not a state proceeding, not a
22 foreign proceeding. So it is our belief that any chats that
23 dealt with attempts to deal with the Lincoln County case are
24 not admissible as well. It has to be an official proceeding.

25 As the Court knows, the Lincoln County proceedings started

1 in August of 2013 and continue to this day.

2 The only proceeding that the Court, in our view, can allow
3 this co-conspirator chatting to come in is attempts to tamper,
4 influence, what have you, a federal proceeding, which this case
5 obviously is. We have to concede that. That did not start
6 until the indictment was returned in late August of 2014.

7 So I think the Court has to separate the three
8 proceedings, and the only chats that can conceivably come in
9 are ones that the government can establish by a preponderance
10 of the evidence all the elements of the offense by a
11 preponderance. And that would only be as to the federal
12 proceeding, not to the Lincoln County proceeding or the
13 Cambodian proceeding.

14 And then the second point we would like to make is, as the
15 Court probably knows, the GaryDonna Facebook account covers
16 both Gary Johnson and Donna Johnson, neither of whom are going
17 to testify. So it seems, to me, the government has -- the
18 government seems to be contending that there was a conspiracy
19 involving Gary Johnson and Daniel Johnson.

20 The government, in our view, would have to show that the
21 email originated from Gary Johnson, and we would acknowledge
22 that if it's clear that Gary Johnson is just forwarding Daniel
23 Johnson chatter information, that's one thing; but when that is
24 not the case, the government would have to make some showing,
25 we would contend, by a preponderance of the evidence, that it

1 was Gary Johnson involved in the chat and not Donna Johnson.

2 So for all those reasons, we think the Court has to take a
3 closer look at that.

4 And then the last thing is we believe that not all the
5 chats completely would fall into any exception that the Court
6 might find and that at some point 403 would have to come into
7 play. The Federal Rules of Evidence.

8 Now, I'll just give one example. There was a chat -- and
9 I can give the Court the specific information. Chats cover a
10 number of different topics. And even if the Court were to find
11 that it's admissible to show an attempt to influence a federal
12 proceeding, the chat also discusses the pending Lincoln County
13 case, and it mentions the detective. And it seems to me that
14 that should be redacted.

15 Now, if the government is willing to agree with us on
16 that, we could work with them to redact.

17 THE COURT: I'm not going to let any of the
18 Lincoln County stuff come in, so let's just make it clear on
19 that. I don't want to go down that path. I don't know how --
20 I'm assuming the government, although it may be in one of the
21 chats, is willing to redact those kinds of statements.

22 MS. POTTER: Yes, Your Honor. And just for the
23 record --

24 MR. WEINERMAN: I'm done. I can sit down.

25 MS. POTTER: Oh, Amy Potter on behalf of the United

1 States. I want to apologize to the Court because when I filed
2 this motion I did not realize that the exhibits were already --
3 Exhibit A is actually three exhibits on the exhibit list. It's
4 169, 170, and 171. I have been told by Counsel that they
5 already redacted the reference to Mr. Harrison. So they do
6 intend that, and there's no intent to offer any of the
7 Lincoln County -- I simply had a different, frankly, version of
8 the chats that I was working from, and I apologize to the Court
9 for that.

10 In terms of Counsel's arguments, I actually think it
11 misstates law. We don't -- we do not need to prove that it was
12 an intent to influence in the context of a federal proceeding.
13 We just need to prove a joint venture to do something, and it
14 doesn't even have to be illegal. And here we have a joint
15 venture to influence witnesses.

16 And I think the cases are pretty clear on that. I think
17 the *Layton* case, which is a case involving the Jonestown
18 massacre, involves a conspiracy to prevent the FBI from knowing
19 the conditions at the location -- or not the FBI -- I'm
20 sorry -- the House of Representatives from knowing the
21 conditions that the members of that group were living in. So
22 that's nothing illegal to try and prevent them from doing that,
23 but they had all agreed, and so statements that were made --
24 again, nothing illegal -- were co-conspirator statements.

25 In terms of the requirement -- and that's also confirmed

1 by the Fifth Circuit case *El-Mezain*, which involves statements
2 made before Hamas was declared a terrorist organization, so it
3 could not be part of the conspiracy or part of any terrorist
4 acts. But they were admitted, even though they were not
5 illegal at the time.

6 And I think in terms of distinguishing Donna versus Gary,
7 I actually think the *Lloyd* case is instructive on that, in
8 which they allowed the admission of statements made by someone
9 who was not even part of the conspiracy that simply went to the
10 overall conspiracy at issue there, which was a telemarketing
11 scheme. So I don't think there's any requirement to prove. In
12 fact, in the Fifth Circuit case, they allowed anonymous
13 statements. So they had no idea who had made the statements
14 that were related to Hamas. But they left them in anyway
15 because overall it showed a joint venture to promote this
16 activity and this information.

17 So I think all we have to prove is a preponderance of the
18 evidence to influence -- frankly, I don't even know that we
19 need to show influence of a witness, but a joint venture to get
20 Daniel's message to victims, whether he intended to influence
21 them or not, and I think that the evidence is pretty clear here
22 that we've done that.

23 So I don't think the issue of whether it's the Cambodian
24 proceeding, the Lincoln County proceeding, or this specific
25 proceeding is relevant for purposes of this analysis.

1 THE COURT: Okay. Well, I don't mean to tell the
2 government how to do your job. I assume you've talked to your
3 appellate attorneys. I mean, sometimes you get what you ask
4 for, and, of course, that builds a record that down the road
5 could -- you know, could cause some difficulties. You know, I
6 personally think it's not a close call. I just wonder if we
7 need to make it, given the evidence thus far in the case.

8 That being said, I think it's clear from the record that
9 Mr. Gary Johnson and Mr. Daniel Johnson had conspired to tamper
10 with witnesses. To the extent that any of the statements are
11 being offered for the truth of the matter asserted, which
12 almost none of these statements are -- I'll talk about that in
13 a minute -- they are admissible as nonhearsay under
14 801(d)(2)(E). Statements of Co-conspirators.

15 It's also clear that Mr. Gary Johnson is acting under the
16 direction of Daniel Johnson; in fact, it's very hard at times
17 to know, reading the Facebook messages, whether it's
18 Daniel Johnson and not Gary Johnson who's actually speaking.
19 So it is an opposing party's statement in aid in a
20 representational capacity through an agent.

21 And to the extent that the statements are being made to
22 prove the truth of the matter asserted, they could still come
23 in under 801(d)(2)(D).

24 But the reality is none of it is really classic
25 co-conspirator statements. They're not statements being made

1 offered for the truth. It's not like one co-conspirator is
2 going to the store and saying, "I need three horses and three
3 guns. We're robbing the three o'clock train to Santa Fe." I
4 mean, these statements are not made really to prove the truth
5 of the matter asserted in that context. They're really
6 nonhearsay statements. The statements are things like, you
7 know, "Let them know I'm praying for you. Let them know I love
8 you. Tell them to hush," you know, "Send money to" -- so and
9 so. These statements aren't being offered for the truth.
10 They're simply being offered to show, I think, the pressure
11 that's being put on the children in terms of how they should
12 testify.

13 I mean, I think it has to be put in the context of the
14 defense in this case, which is every one of these children are
15 liars. They've been manipulated by the police. They've been
16 manipulated by APLE. They've been manipulated by other
17 organizations. Perhaps manipulated by lawyers. They convinced
18 each other that they should lie so that that they can stay in
19 the United States and get visas, and it would simply be -- I
20 think it would be unfair not to present the entire picture of
21 the pressure that these children had been under by everybody,
22 the greatest of which is, quite frankly, Gary Johnson and
23 Daniel Johnson through these Facebook messages.

24 You know, what the defense wants to argue is the victims
25 have made inconsistent statements. They have at times made

1 themselves unavailable for testimony because in the past they
2 would have denied the abuse, but the problem is that the
3 inconsistency and their hesitancy to testify is equally
4 explained by the pressure put on them by the two Johnson
5 brothers.

6 Also, it just seems to me this is no different than
7 fleeing from the police. It's evidence of consciousness of
8 guilt. If you're contacting consistently the victims who have
9 all testified they have been contacted. They visited, of all
10 people, the very person who abused them in prison, there is an
11 ongoing narrative here of attempts to continue to manipulate
12 children, and it does evince, in my mind, clearly a
13 consciousness of guilt.

14 So I think it comes in certainly under the co-conspirator
15 nonhearsay rules, the agency rules, but I think more
16 significantly these are nonhearsay statements because they're
17 not being offered to prove the truth of the matter asserted but
18 to show the manipulation, the pressure that's been put on the
19 children to make themselves unavailable to change their
20 stories.

21 So in that context, it's simply admissible. It's
22 nonhearsay. So I'll allow it in. Obviously, the government
23 has to establish through some witness how the exhibits were
24 seized and who they belong to and how they found them; but with
25 that foundation, it would be admissible.

1 MS. POTTER: Thank you, Your Honor. And so that's
2 169, 170, and 171. It's my understanding the government also
3 has a new exhibit to offer. 305. And so, Your Honor, if I
4 could present this to the Court.

5 THE COURT: Yes.

6 MS. POTTER: I believe, Your Honor, that that would
7 fall under this same theory and actually Mr. Angel has pulled
8 it up on the screen. It's yet another message. This one to
9 SO XXX.

10 THE COURT: Looks like it's pretty clear. It would
11 come -- consistent with the earlier ruling, it would come in.
12 That's 305. Sorry. I'm losing my voice again.

13 All right. Anything else we need to talk about?

14 MR. WEINERMAN: I think we need to talk about whether
15 anything about the lawsuit is admissible. I don't know if this
16 is the time the Court wants to hear, but -- I know a little bit
17 of where the government might be going on this, but we believe
18 that the fact of the lawsuit and anything in it is just not
19 relevant to the proceedings here. It's extremely prejudicial.
20 It opens up another whole Pandora's box in this case that will
21 need to be discussed. The government doesn't need it, but, you
22 know, that's their call whether they want to inject that into
23 the proceedings, but it just seems to me that this is something
24 the Court should exercise its discretion and not allow to be
25 discussed.

1 THE COURT: A couple of things on that case, which is
2 Daniel Stephen Johnson, Plaintiff, v. multiple defendants
3 beginning with the City of Toledo, Oregon. It's Case
4 18-cv-738. It is a case that looks -- you know, sometimes -- I
5 know this is hard to believe for people, but it was randomly
6 assigned to me, and I'll certainly take it under consideration
7 whether I should rule upon it.

8 You know, in looking at these cases, these pro se prison
9 litigation cases, I mean, typically these are subject to
10 sua sponte dismissal. There's a number of issues, including
11 personal jurisdiction. Immunity, the Heck doctrine, statute of
12 limitations, you know, the list goes on as to why this case
13 probably is not going to survive for much longer, whether it's
14 myself or another judge that enters a dismissal order. That
15 doesn't save the fact that it's statements by Mr. Johnson.

16 We don't have to get into great detail about it now, but I
17 guess I would like some direction from the government on which
18 specific statements out of the complaint that you are hoping to
19 introduce. Is this something you're just thinking about? Is
20 it a place you really want to go?

21 MR. SINHA: So, Your Honor, I think at this point we
22 would like a -- we're hoping to step very lightly with regards
23 to this lawsuit. So I think the things we're interested in are
24 the sworn-in statements from Mr. Johnson. Which he signed the
25 lawsuit under penalty of perjury that he is an Oregon resident

1 and that he's a citizen of the United States. The residency,
2 obviously, is important to our venue under 18 U.S.C. 3238. And
3 the citizenship is important to Counts 1 through 6. Even
4 though we have a stipulation, we would just like to highlight
5 that.

6 The other thing --

7 MR. WEINERMAN: Judge, could I -- sorry to interrupt
8 Counsel, but that is certainly is something that not only has
9 the evidence proven, but we're not contesting it. And if it
10 makes a difference to the Court, we would be willing to
11 stipulate that he's a U.S. citizen and has been or was a
12 resident of Oregon. So I don't think they need the lawsuit to
13 prove this. I think there's ample evidence in the record that
14 that has been established.

15 THE COURT: I agree with the defense. If we can go
16 forward with the stipulation, that would be part of the
17 instructions. So, I mean, the jury would be instructed to the
18 fact that Mr. Johnson is an Oregon resident and he's a citizen
19 of the United States. If we can't agree on a stipulation,
20 we'll enter his statements.

21 MR. SINHA: That makes sense.

22 Your Honor, I guess the only other thing that we had an
23 interest in, with regards to the lawsuit, is just the fact that
24 a lawsuit was filed. And that's in light of the message
25 that -- it's Exhibit 305 where basically Gary Donna -- the user

1 of the GaryDonna account is telling SO XXX "Daniel is going to
2 sue the FBI." Basically, "If you cooperate, we'll get some
3 money, and we'll share that money with you."

4 The fact that Daniel then did sue the FBI seems, to me,
5 significant with regards to that message.

6 So even if it was just testimony of an agent saying a
7 lawsuit has been --

8 THE COURT: But you're not offering the statement for
9 the truth. So you don't have to prove that he, in fact,
10 intended to or did, in fact, sue the FBI. The reason you're
11 offering that is its impact on the particular victim, and, in
12 fact, he's trying to bribe them, it sounds like. That, in and
13 of itself, is admissible, whether it's true or not and whether
14 he followed through or not. And certainly then we get into
15 would he ever really get any money out of this particular
16 lawsuit, and even I would have to say at this stage he may get
17 an opportunity to replead or amend the lawsuit, but there's
18 just too many deficiencies in this particular suit. And I did
19 spend some time last night with our pro se law clerk who's been
20 working on this with me, and my -- my only hesitancy in --
21 in -- in following through with my normal course of practice,
22 which would be to dismiss the case with leave to amend, is that
23 I -- I think it may make more sense, and I think Mr. Johnson
24 would feel that he's getting a fairer break if the judge who is
25 hearing his criminal case isn't the one who's dismissing his

1 civil case.

2 So I'll probably recuse, Mr. Johnson, on your civil case.
3 And I assume your case will then be transferred, I'm assuming,
4 to Judge Aiken, who would then review the case.

5 MR. SINHA: Thank you.

6 THE COURT: But, I mean, when I say there's
7 deficiencies, I mean, there's -- I mean, as plead, I just don't
8 see the case going anywhere, and I don't want to have to get
9 into those issues, too, of whether the lawsuit would have
10 resulted, then, in money that could have theoretically gone to
11 Mr. Johnson that he could have then paid off the victims. So I
12 will not allow the fact of the lawsuit into evidence at this
13 time.

14 MR. SINHA: Thank you, Your Honor.

15 THE COURT: Okay. Thank you.

16 Anything else we need to discuss?

17 MR. SINHA: I think we have one last thing that
18 Mr. Johnson's counsel would like to raise.

19 Since we're not asking the Court to seal the hearing, but
20 since it's a sensitive personnel issue, I'm just asking for the
21 people with me from the government to at least step out, unless
22 it's -- if you would give us just a moment to get our people
23 out.

24 THE COURT: Yes.

25 (Pause-in-proceedings.)

1 MR. SINHA: So, Your Honor, the issue is related --
2 and I'll let Mr. Weinerman or Ms. Maxfield take the reins, but
3 it's related to an in camera submission the government made to
4 the Court, I believe in early February, regarding a performance
5 improvement plan of one of our agents. So my recollection is
6 that we submitted a motion for the Court to review the plan
7 itself in camera. We also, alongside of that, submitted a
8 letter that we thought outlined what would be the disclosable
9 contents of the report.

10 The Court, as I recall, issued an -- reviewed the entire
11 report, reviewed the letter, issued an order saying the letter
12 can be disclosed, but the report itself need not be disclosed;
13 so my understanding, then, is that Mr. Johnson's counsel would
14 like to revisit that order.

15 THE COURT: Okay.

16 MR. WEINERMAN: Judge, what we're asking is as
17 follows: There are documents that underline this letter dated
18 February 12, 2018, from the government to the defense. And
19 they refer to them as critical elements, CEs, which underline
20 this letter about -- I don't want to -- I don't know if this is
21 considered a censure, an admonishment, but it's some indication
22 that an unacceptable performance level of this particular FBI
23 agent.

24 So there's underlying documents that we would like to look
25 at so we can decide for ourselves whether it's information that

1 impeaches the credibility of the witness in some way. I
2 suspect the Court has seen the documents. The Court may
3 already remember what they say. But if the Court doesn't,
4 we're simply asking either that we be allowed to look at the
5 documents or that the Court look at them in camera and make a
6 ruling whether it's information that would be admissible on
7 cross-examination to impeach either the credibility of the
8 agent or perhaps, more importantly, impeach his professional
9 abilities and would indicate that he does not reach the
10 professional standards that one would expect of an FBI agent,
11 so that is -- that's our --

12 THE COURT: Would somebody direct us to the filing
13 number if you have it?

14 MR. SINHA: Sure. Your Honor, I think that -- here,
15 I'll give -- the Court's order was Document 105.

16 DEPUTY COURTROOM CLERK: 104. Document 104 is the
17 motion, but we don't have the -- I don't have access to the in
18 camera --

19 MR. SINHA: Your Honor, we may -- we have a copy of
20 the materials, and it certainly makes sense, I think, in light
21 of now having heard the trial testimony, for the Court to take
22 a look at it. So we're happy to provide it.

23 THE COURT: I'll take a look at it again, and we can
24 get back to that at our next break.

25 MR. SINHA: Thank you.

1 MR. SWEET: Would the Court like that now,
2 Your Honor? It'll take us two minutes to --

3 THE COURT: Yes.

4 MR. SWEET: Okay.

5 (Pause in proceedings.)

6 MR. SWEET: Sorry, Judge.

7 THE COURT: That's okay. Thank you for getting that.

8 MR. SWEET: It is not signed, but it's what we were
9 provided, Your Honor.

10 THE COURT: Who is our next witness?

11 MR. SWEET: Pastor Sopheak is still on the stand,
12 Your Honor. And just so the Court knows, one of our
13 witnesses -- one of our witnesses we won't be calling, so we
14 only have the rest of Pastor Sopheak and then three other
15 witnesses. We are still -- very much think we're very much on
16 track.

17 THE COURT: Okay. Let's bring the jury in. And if
18 you can bring in Pastor Sopheak, we can get him on the stand.

19 (Jury present.)

20 THE COURT: Please be seated, everybody.

21 Thank you, folks, for your patience with us this morning.
22 We were working on some legal matters. But with that, we'll
23 return now to the cross-examination of Pastor Sopheak.

24 You're still under oath in the case.

25 THE WITNESS: Yes.

Sopheak - X

1 CHHOEURN SOPHEAK,
2 called as a witness in behalf of the Government, being
3 previously duly sworn, is examined and testified as follows:
4

5 CROSS-EXAMINATION

6 BY MS. MAXFIELD:

7 Q. Good morning, Pastor Sopheak.

8 A. Good morning.

9 Q. How is your tooth?

10 A. It's okay.

11 Q. I'm Lisa Maxfield, and I'm one of Daniel Johnson's
12 lawyers. And I just wanted to ask you a few questions.

13 A. Yes.

14 Q. Khmer massage is part of your country's culture, isn't it?

15 A. That, I didn't pay attention to; yes, but in Cambodia
16 there is massage.

17 Q. And massage is very common in your country?

18 A. In my own town. Not hardly. But I didn't pay much
19 attention to that fact.

20 Q. You testified, though, about seeing Mr. Johnson get
21 massages many, many times?

22 A. Yes.

23 Q. You saw the kids massage his feet?

24 A. Yes. Yes. Hand and feet.

25 Q. And you saw the kids massage his back?

Sopheak - X

1 A. (Witness nods.)

2 Q. You saw him get massages in chairs?

3 A. Like I said earlier, like in a teasing manner; you know,
4 jokingly.

5 Q. And you saw him get massages while he was lying on his
6 bed?

7 THE INTERPRETER: Counsel, can you repeat the key
8 part? Can you please repeat that question?

9 BY MS. MAXFIELD: (Continuing)

10 Q. Yes. You saw him get massages while he was lying on his
11 bed?

12 A. Yes.

13 Q. And you knew that he paid kids for massages?

14 A. Like I said earlier, you know, when the kids get
15 massage -- or give massages and I see that they usually get
16 money to buy things to eat.

17 Q. Okay. So it wasn't a secret that Daniel Johnson got
18 massages at the center?

19 A. What do you mean, kind of, secret or --

20 Q. Everyone knew he got massages, didn't they?

21 A. Yes. Yes. They know. But sometimes if you don't get to
22 see it, you don't know about it.

23 Q. I'm not saying you saw every massage.

24 A. Yes.

25 Q. But you saw them often and -- go ahead.

Sopheak - X

1 A. Yes, I did see it often. Every time I went into his room,
2 I see the kids, you know, do massage; but not -- that is not to
3 say that every time I go I see -- every time I go I see -- I
4 see every time.

5 Q. I understand. But the massages didn't worry you at the
6 time, did they?

7 A. No.

8 Q. You also said that -- I want to talk a minute about
9 Daniel Johnson's room. His was the only air-conditioned room
10 in the center; is that right?

11 A. Yes.

12 Q. He had the only room that was cool?

13 A. (Witness nods.)

14 Q. And at least in the last house there was a projector in
15 Daniel's room?

16 A. Yes.

17 Q. To watch DVDs and movies?

18 A. (Witness nods.)

19 Q. And so you saw boys in Daniel's room many times.

20 A. Yes.

21 Q. And, again, that was not a secret?

22 A. No. I see him in the bedroom with two or three kids, two
23 or three kids, or one kid.

24 Q. Everyone knew?

25 A. What do you mean "everyone knew"? What do you mean by

Sopheak - X

1 that? What, is that a question?

2 Q. Yeah. It wasn't hidden?

3 A. Most -- most of the time -- every time the kids -- like,
4 most of the time the kids would go into Daniel's room to get
5 massages, and they would come back out and they would say, "Oh,
6 I just gave Daniel a massage." Like I said earlier, most of
7 the time when I'm there, I'm seeing it, and when I'm not there,
8 I don't know if a massage happened or not.

9 Q. Well, you knew that sometimes kids slept in his room, too,
10 didn't you?

11 A. With regard to the kids sleeping in his room overnight? I
12 do not know. But mostly in the morning time I see them in the
13 bedroom and, in summary, there is one kid that is -- was --
14 with regard to SO XXX, that I know, because I can see the
15 bedroom -- in the bedroom -- oh, he lives in the same bedroom.

16 Q. And that didn't worry you at the time either, did it?

17 A. No.

18 Q. I want to show you -- is it Defense Exhibit 604 or
19 Government Exhibit 604? Defense? Exhibit 604, page 4. I
20 think this is already in.

21 Are you in that picture?

22 A. Yes.

23 Q. Which one are you?

24 A. (Indicating.)

25 Q. In the blue shirt?

Sopheak - X

1 A. Correct. I already made a mark, but that one -- this mark
2 now. You enlarged it.

3 Q. Is that the entryway to the last Hope Transition Center
4 house?

5 A. Yes.

6 Q. On the side of where the gentlemen are standing, do you
7 see, like, a red gate?

8 A. Yes.

9 Q. And that's a gate that locks from the inside?

10 A. What do you mean lock on the inside?

11 Q. Does that gate lock?

12 A. Yes. That -- that gate locks, and there's another door
13 also.

14 Q. So there's --

15 A. And you have to --

16 Q. Sorry. Go ahead.

17 A. And you have to take a lock or a key to lock it.

18 Q. And to unlock it, you would need to be on the inside of
19 the house, not the outside?

20 A. Yes. That's correct.

21 Q. I want to show you Exhibit 604, page 6. Page 6 -- oh, 7.
22 I'm sorry. Page 7. Do you recognize that room?

23 MS. MAXFIELD: Is the jury able to see these?

24 THE JURY: Yes.

25 THE WITNESS: Recognized.

Sopheak - X

1 BY MS. MAXFIELD: (Continuing)

2 Q. All right. And can you tell me who's sitting there in
3 that room?

4 A. Heang.

5 Q. That computer there, that's the Acer computer?

6 A. What do you mean "Acer"?

7 Q. The brand.

8 A. I do not know. I didn't pay attention.

9 Q. Okay. If you look closely, do you see "Acer"?

10 A. (No verbal answer given.)

11 Q. That was the computer that was in the office at the
12 center?

13 THE COURT REPORTER: I'm sorry. I'm not getting
14 verbal answers.

15 THE WITNESS: This computer, I don't know at that
16 time. Sometimes Heang use it and other times there are other
17 people who use it.

18 BY MS. MAXFIELD: (Continuing)

19 Q. So different people would use that computer?

20 A. Yes.

21 Q. You testified on direct that you met Mr. Johnson when you
22 were with Pastor Pilot?

23 A. Yes.

24 Q. And did you move into the Hope Transition Center with
25 Pastor Pilot?

Sopheak - X

1 A. Yes.

2 Q. And at that time Pastor Pilot had several children that
3 were in his care?

4 A. Yes.

5 Q. But the ministry mostly at that point was doing good works
6 out in the Cambodian countryside; is that right?

7 A. Yes. We -- we would -- we would go to do the ministry or
8 spread the good words in the provinces.

9 Q. And are the provinces the rural areas of Cambodia?

10 A. Yes. It's very rural and most of the provinces are like
11 the farmers, rice agriculture area.

12 Q. And then most of the people in the provinces are very
13 poor?

14 A. Some. Some are very poor. Some are middle class. It all
15 depends in the manners of where they live in the rural area
16 part of the province.

17 Q. That makes sense.

18 But there was a time when Pastor Pilot left the center; is
19 that right?

20 A. Yes.

21 Q. He and his wife moved out?

22 A. Yes.

23 Q. And he left the children behind?

24 A. He left the kids with Daniel.

25 Q. So after Pastor Pilot left, then you each had new jobs,

Sopheak - X

1 didn't you?

2 THE INTERPRETER: Counsel, I'm sorry. I couldn't
3 hear you.

4 BY MS. MAXFIELD: (Continuing)

5 Q. After Pastor Pilot left, you, Daniel Johnson, and
6 BT XXXXXXXX each had new responsibilities?

7 A. I am responsible for teaching the gospels to the kids.

8 Q. And was that new? Was Pastor Pilot in charge of that
9 before he left?

10 A. I have to say a little bit longer. I have to elaborate.

11 At the time before Pastor Pilot left, I did not know that
12 he left because I was in Prey Veng for two months. You know, I
13 was checking out some building, and then I heard Pastor Pilot
14 had left the center, you know, where Daniel was.

15 Q. Okay. My question was -- oh, go ahead.

16 A. After that -- after Pastor Pilot left and there was a role
17 for teaching the gospels to the children in the center. So
18 there was a role that needed to be filled.

19 Q. And you became the pastor for the children at that point?

20 A. So if you're speaking about officially being anointed and,
21 you know, with the hands-on-the-head prayer, anoint and prayer,
22 that did not happen yet. It's a little bit after a while.

23 Okay. Like, in the second house, it was Daniel and the
24 kids who were the one who did the anointing and then prayers
25 and said that I am the pastor, the one that can teach them the

Sopheak - X

1 gospel.

2 So before that, I was teaching the gospel, the words of
3 God, but I was not appointed and had the prayer. But
4 according -- if it was formally according to the Bible, you
5 have to be anointed and have the prayers in order that -- that
6 ritual has to be -- you have to go through that ritual in order
7 for you to have more power and for what you teach to -- to be
8 more -- to be more manifested.

9 Q. Did you have other jobs at the center besides being the
10 person who taught the children the gospel?

11 A. Take care of the kids. So in addition to -- in addition
12 to the teaching of the gospel, I would help take care of the
13 kids. And then on Saturday and Sunday I would go to the
14 provinces. And when I did go to the provinces, I would check
15 on the churches and teach the gospel -- become an evangelist,
16 spread out the Good News.

17 Q. So when you were at the center during the week, your job
18 was to be a gospel teacher and kind of a father figure to the
19 children; is that right?

20 A. Well, I -- I don't know if that's right or wrong. I just
21 know that, you know, I'm an adult. You know, I help watch over
22 the kids, and, you know, take care of them.

23 Q. But you didn't like to discipline the kids that much, did
24 you?

25 A. I, like, when they do something wrong, I like for them to

Sopheak - X

1 read the verses from the Bible and then for them to recite the
2 verses from the Bible.

3 Q. Usually, though, the discipline of the kids was left to
4 Mr. Johnson?

5 A. Correct.

6 Q. And BT XXXXXXXX, after -- after Pastor Pilot left,
7 BT XXXXXXXX had a new job too; is that right?

8 A. Yes, there was a new role, and then -- but I don't know
9 exactly what -- how many roles he had. I just know that he was
10 with BT XX. And then exactly what he does, I don't know it;
11 but he has many other things that he did.

12 Q. He was Daniel Johnson's assistant?

13 A. (Witness nods.)

14 Q. And Daniel Johnson --

15 A. Correct. I think that he is -- you know, he's, like, the
16 assistant, yes.

17 Q. Sorry. I got ahead of you. I saw you nod.

18 And Daniel Johnson then became the director of the center?

19 A. (Witness nods.)

20 Q. And there were two -- two prongs of the ministry there.
21 One involving the children and one involving the good works out
22 in the provinces?

23 A. What do you mean "prongs"?

24 Q. Two roads. Two tasks.

25 A. After who left?

Sopheak - X

1 Q. After Pastor Pilot left.

2 A. Correct. After Pastor Pilot left. So he had to work
3 with, you know, helping the kids at the center and helping the
4 community and then also with spreading Good News, you know,
5 disseminating the gospels at the provinces.

6 Q. And a lot of the good works that Hope Transitions did cost
7 money?

8 For example --

9 MS. MAXFIELD: Oh, he -- I'm sorry. He's nodding.
10 You didn't say "yes." You just nodded.

11 THE WITNESS: Yes.

12 BY MS. MAXFIELD: (Continuing)

13 Q. Thank you.

14 And it was Daniel Johnson's job to raise that money?

15 A. Yes. He's the one to find the financial provider or
16 sponsor, and he has relationship with those people to -- you
17 know, to help with the financial part.

18 Q. And Mr. Johnson would need to come to the United States a
19 couple of times each year to raise that money?

20 A. That's correct. He told me to go because he -- he's
21 leaving to go so that he can find help to get assistant to help
22 the kids in Cambodia.

23 Q. So he would come to the United States to raise money to
24 help the Cambodian children?

25 A. Yes. He's -- he would always tell me. He would always

Sopheak - X

1 say that.

2 Q. And all the money that the children at the center lived on
3 was the money that Mr. Johnson raised here in this country?

4 A. That, yes. Correct. He got assistance from the people
5 from the United States and some other organization too.
6 Correct.

7 When you said "organization," what are you talking about?
8 That's okay.

9 Q. Okay. So -- but he also needed to raise money to fund
10 many of the projects that happened out in the provinces; is
11 that right?

12 A. (Witness nods.)

13 Q. And some of those --

14 MR. WEINERMAN: He said "bat," but she didn't say --

15 MS. MAXFIELD: I know. I know. I'm sorry.

16 THE WITNESS: Yes.

17 BY MS. MAXFIELD: (Continuing)

18 Q. You talked about being in Prey Veng when Pastor Pilot
19 left.

20 A. What?

21 Q. You testified that you were in Prey Veng when Pastor Pilot
22 left.

23 A. At that time is like I was in Prey Veng for two months.

24 Q. And you said you were there looking at properties?

25 A. Because at that time there was a lot of people that were

Sopheak - X

1 not happy because we're Christians, and they would throw rocks
2 or they would throw things at us, you know, when we were
3 around. So, therefore, he asked me to go as -- to help out, to
4 help the teacher. Pastor K-i-m, S-a-n -- to help
5 Pastor Kim San at the province.

6 Q. I want to show you what's been marked as Defense Exhibit
7 616, page 2. Do you recognize that?

8 A. Recognize? Yes.

9 Q. And what is that?

10 A. This is in Prey Veng.

11 Q. One of the things that Daniel Johnson wanted to do with
12 you was to build this compound in Prey Veng?

13 A. Correct. This is the -- this is the design, you know.
14 It's a model design. And we saw that, and we also want that
15 also.

16 Q. So the plan was to build this entire compound for the
17 people in Prey Veng?

18 A. What people in Prey Veng?

19 Q. The Christians in Prey Veng?

20 A. Yes. Yes, for the Christians in Prey Veng.

21 Q. And in order to build -- this was an ambitious project.

22 A. (Indicating.)

23 Q. You have to say it out loud.

24 A. Yes.

25 Q. And Mr. Johnson raised the money to buy all the land?

Sopheak - X

1 A. Yes.

2 Q. Let me show you what's been marked as Defense Exhibit 616,
3 page 119. Do you recognize the person in that picture?

4 A. I.

5 Q. Who is that?

6 A. It is me.

7 MS. MAXFIELD: Is this published for the jury? I'm
8 sorry.

9 A JUROR: Yes.

10 BY MS. MAXFIELD: (Continuing)

11 Q. What are you doing, Pastor Sopheak?

12 A. So at that time we were in the middle of buying wood, you
13 know, to build the building, you know, for whatever parts --
14 whatever structure we need.

15 Q. And you and Mr. Johnson and BT XXXXX and the kids at the
16 center needed the help from various church groups to build
17 these buildings; is that right?

18 A. What kind of help? What kind? Energy or budget?

19 Q. Both.

20 A. Yeah, we have -- we have our fellow Christians who help
21 us, you know, in terms of the labor force.

22 Q. Teams would come from the United States?

23 A. Yes. Yes. The fellow Christians came, yeah, came to help
24 build.

25 Q. And those Christian teams would stay anywhere between ten

Sopheak - X

1 days and two weeks to help?

2 A. Most of the time, two weeks. Most of the time, two weeks.
3 Mostly.

4 Q. I want to show you what's been marked as
5 Defendant's Exhibit 710, page 1.

6 MR. SWEET: No objection.

7 THE COURT: All right. It will be received.

8 DEPUTY COURTROOM CLERK: Counsel, you already had a
9 710. Is it the BT XXXXXX --

10 MS. MAXFIELD: I have a 710? I'm not the numberer.

11 THE WITNESS: What is this? What is this?

12 MS. MAXFIELD: Well, it's something we'll talk about
13 in a minute, but right now we need to make sure we have the
14 numbers correct.

15 THE COURT: We need to get it a number.

16 MS. MOSS: Let's make this 720.

17 MS. MAXFIELD: Let's make it 720.

18 THE COURT: Okay.

19 BY MS. MAXFIELD: (Continuing)

20 Q. Now, let me ask you to look at Exhibit 720, the exhibit in
21 front of you. This is in English. Do you read English?

22 THE INTERPRETER: It's a little bit blurry. The
23 interpreter thinks it's a little bit blurry.

24 THE WITNESS: What's up with this? Why do you want
25 me to read it?

Sopheak - X

1 THE COURT: I don't want you to ask questions about
2 your questions.

3 Do you have a hard copy that we can give the translator to
4 read to --

5 MS. MAXFIELD: You know, I do. Is it too teeny?

6 THE WITNESS: This is a schedule.

7 BY MS. MAXFIELD: (Continuing)

8 Q. Pastor Sopheak, can I ask you a couple of questions about
9 that?

10 A. Yes. Yes.

11 Q. When the Christian groups would come from the United
12 States, Mr. Johnson would need to organize their activities?

13 A. That's correct. He would have to organize the schedule
14 for the guests.

15 Q. Is that what this is -- a very detailed schedule of what
16 the people would do when they were in Cambodia?

17 A. Yes. This is the schedule when, you know, for -- for
18 going to -- going out to visit, to -- to help the church to
19 help spread the Good News. There's many other activities.

20 Q. And Mr. Johnson was the person in charge of organizing all
21 those activities?

22 A. Yes. He's the one who organized this schedule.

23 Q. I want to show you what's been marked as Defendant's 616,
24 page 170. Do you recognize that?

25 A. I think that's in Prey Veng.

Sopheak - X

1 Q. Yes. And in Prey Veng, you brought -- Hope Transitions
2 brought electricity into that Prey Veng compound; is that
3 right?

4 A. Are you talking about in the whole Prey Veng city or just
5 in the center, the electricity to the center?

6 Q. Well, two questions. You brought it to the center?

7 A. In the building. In the church.

8 Q. And by bringing electricity into the church, you were also
9 able to give electricity to many people in the village?

10 A. No. That, I do not think in that way because it is -- the
11 government, you know, it's their duty to put electricity for
12 all those villages. Because in all those little villages and
13 in the quarters, part of the district, they all have
14 electricity.

15 Q. I want to show you Defendant's Exhibit 616, page 2 again.
16 Was part of that plan to build a church in the Prey Veng
17 compound?

18 A. Yeah, that's the plan.

19 Q. Can you mark for us where the church would be?

20 A. That's the church. That's the bathroom.

21 Q. I want to show you what's been marked as Defendant's
22 Exhibit 616, page 51.

23 A. That's the church.

24 Q. The church was completed; is that true?

25 A. Yes.

Sopheak - X

1 Q. And let's look at page 6 -- or Exhibit 616, page 2 again.

2 Part of the plan was to build student housing on the

3 compound; is that right?

4 A. What do you want me to show you?

5 Q. Yes. Could you show us where the student housing is?

6 A. This is the -- that's for the kids center. It's the kids

7 center. This is the plans for the kids center.

8 Q. So you called it the kids center?

9 A. That's the plan for -- it's just a plan where you put for
10 the orphaned children. This is the plan.

11 Q. So let me show you what's been marked as Defendant's
12 Exhibit 616, page 238. And is that the completed kids center
13 or student center?

14 A. It completed the lower level, the second level. But the
15 highest level, it was not. I did not -- they did not put
16 the -- they did not put the ceiling yet.

17 Q. So you're saying it got mostly finished and Mr. Johnson
18 got arrested?

19 A. Yes.

20 Q. Has it been finished --

21 A. However --

22 Q. -- since then?

23 A. Are you asking just specifically this building or all the
24 buildings?

25 Q. I'm asking about the -- what you call "the kids center"

Sopheak - X

1 and I called "the student center."

2 A. Yes.

3 Q. Do you know whether any students are living there now --
4 any orphans are living there?

5 A. Right now?

6 Q. Uh-huh.

7 A. No. Only Pastor Kim San's family.

8 THE INTERPRETER: Kim San is the same spelling.

9 K-i-m. San, S-a-n.

10 BY MS. MAXFIELD: (Continuing)

11 Q. Let's look at Exhibit 616, page 2 again. Was there a
12 planned medical center in the compound?

13 A. That one is where they want to have a clinic.

14 Q. Let me show you what has been marked as Defense
15 Exhibit 616, page 193. Is that the medical center?

16 A. Yes. Yes.

17 Q. And that's what it looked like when Mr. Johnson was
18 arrested at the time of his arrest?

19 A. It's still the same, yes.

20 Q. Medical center hasn't been completed?

21 A. Yes.

22 Q. Pastor Sopheak, is this a congregation in Prey Veng that
23 you minister to on this compound?

24 A. Can you make your question a little bit more clear?

25 Q. Yeah. Do you spread the gospel at this church in

Sopheak - X

1 Prey Veng -- the one you built?

2 A. Yes. I have done that in the Prey Veng church. Yes, I
3 have done that in the Prey Veng church.

4 Q. Do you go there a few times a year to preach to that
5 congregation?

6 A. It's not two, three times a year. It's -- I don't know
7 how many times a year.

8 Are you talking about in the past? Are you talking about
9 before or right now?

10 Q. Right now.

11 A. Now I go once every two weeks. And then you normally --
12 this week I go to Kampot Province, and the next week I go to
13 Pre Veng Province. And now it's like I go more regularly to
14 Prey Veng Province because I want to go to the other small
15 towns and all the villages.

16 Q. So in one week you go to the church in Prey Veng and
17 preach the gospel to that congregation?

18 A. The Harvest Church. So when I go to teach the gospel, I
19 go to the church; but when I go to disseminate the Good News, I
20 go to the Harvest Church.

21 Q. And you said that then some -- the other week you were in
22 Kampot?

23 A. Yes. There's some weeks I go to Kampot.

24 Q. And can I show you what has been marked as Defendant's
25 Exhibit 615, page 48? Is that where you preach the gospel in

Sopheak - X

1 Kampot?

2 A. Yes.

3 Q. And that's also a church that was built by the Hope
4 Transition Center and Mr. Johnson?

5 A. Yes.

6 Q. Pastor Sopheak, is the property in Prey Veng and the
7 property in Kampot legally held in your name and the name of
8 BT XXXXXXXX?

9 A. In Kampot Province, in terms of the church, it does not
10 have -- it does not have my name. It has four section. Before
11 the church part has -- does not have my name, and the other
12 three parts has my name.

13 Q. Prey Veng has your name?

14 A. Yeah. The one in Prey Veng has my name, but I would like
15 to elaborate or explain. Before Prey Veng had my name.
16 Before. Before. Okay. Before it has my name; however,
17 because of the government in charge of the land ownership came,
18 and it's called a land certificate, they own -- now only put
19 one person's name, which is Pastor Kim San.

20 Q. So the land is no longer in your name?

21 A. In the -- in the property, off the land, it does not have
22 my name. However, because we only put the land in one person's
23 name because of our faith, but we believe --

24 THE INTERPRETER: I said wait. I cannot -- you know,
25 the translation.

Sopheak - ReD

1 THE WITNESS: Because we believe in our faith, and we
2 want to be, you know, trustworthy of each other's fellow
3 Christians and then we -- so we have -- so we can do the
4 gospel-spreading, dissemination of the gospel, spreading the
5 Good News of the Lord.

6 However, related to the land certificate, he gave it to me
7 to -- for safekeeping.

8 MS. MAXFIELD: Thank you. I have no further
9 questions.

10 THE COURT: Redirect?

11 MR. SWEET: I just have one photograph for
12 Pastor Sopheak. I'm going to just ask this be shown to
13 Pastor Sopheak.

14 Pull up Exhibit 98, please. This is just to Counsel and
15 Pastor Sopheak at this point.

16 MS. MAXFIELD: Objection. Beyond the scope, I think.

17 THE COURT: I'll allow it. Go ahead.

18
19 REDIRECT EXAMINATION

20 BY MR. SWEET:

21 Q. Pastor Sopheak, there was a discussion of a film projector
22 in Mr. Johnson's room. Are you familiar with Mr. Johnson's
23 room in the third house?

24 THE INTERPRETER: Counsel, "third house"?

25 MR. SWEET: Yes.

Sopheak - ReD

1 THE WITNESS: Do you mean do I recognize his room?

2 BY MR. SWEET: (Continuing)

3 Q. Yes. Do you recognize it?

4 A. Yes.

5 Q. Is that a photograph of Mr. Johnson's bedroom at the third
6 location?

7 A. Correct. Correct. That's it.

8 Q. And did you see Mr. Johnson's bedroom on the day of his
9 arrest?

10 A. I saw, yes.

11 Q. And is the film projector that you discussed with
12 Ms. Maxfield visible in the center of this photograph?

13 A. That's the projector right there.

14 Q. So does that photograph generally depict Mr. Johnson's
15 bedroom around the time of his arrest?

16 A. Yes.

17 MR. SWEET: Your Honor, the government is not asking
18 that the photograph be published at this point, but we believe
19 a foundation has been laid for its admission. We would ask
20 that it be admitted but not yet published.

21 MS. MAXFIELD: We would ask the Court to withhold
22 ruling so we can have a chance to argue it.

23 THE COURT: Okay.

24 MR. SWEET: The government has no further questions
25 for Pastor Sopheak.

1 THE COURT: Pastor Sopheak, thank you very much.
2 You're free to step down.

3 THE WITNESS: It's over?

4 THE COURT: Yes.

5 THE WITNESS: Can I go home?

6 THE COURT: Is he still under subpoena?

7 MR. SWEET: He is, Your Honor. We do not anticipate
8 we'll need to call Pastor Sopheak again, but until the
9 conclusion of the case, we ask to keep him under subpoena.

10 THE COURT: Pastor Sopheak, it's possible you could
11 be re-called to the stand.

12 Okay. Next witness.

13 MR. SWEET: Thank you, Your Honor. We do have our
14 next witness, but I believe the Court was reviewing one matter
15 that the parties needed to discuss.

16 THE COURT: Okay. Folks, I need to have a quick
17 discussion with the attorneys. We'll take a morning break.

18 (Jury not present.)

19 THE COURT: All right. I have reviewed the
20 disclosure order that I previously ordered turned over from the
21 government to the defense regarding the performance improvement
22 plan. It was signed between Special Agent Schoening and his
23 supervisor. And I have reviewed the performance improvement
24 plan. It's my ruling that the disclosure letter covers all of
25 the relevant to the critical elements of the improvement plan

1 and it covers, with specificity, any reference in the plan to
2 Agent Schoening's performance in the Johnson case, and,
3 therefore, the -- the plan itself is not to be turned over.

4 MR. WEINERMAN: Judge, would the Court mark that as a
5 Court's exhibit what the Court has reviewed and put it under
6 seal so that there's a record in case somebody wants to raise
7 this issue in the future?

8 THE COURT: Yes. All right. So we will mark the
9 disclosure letter.

10 Char, is that already filed under seal?

11 DEPUTY COURTROOM CLERK: It is not.

12 THE COURT: It is not. So the disclosure itself will
13 be Court Exhibit --

14 DEPUTY COURTROOM CLERK: 8.

15 THE COURT: -- 8?

16 DEPUTY COURTROOM CLERK: Yes.

17 THE COURT: Then the performance improvement plan
18 will be filed under seal as Court Exhibit 9.

19 MR. WEINERMAN: Judge, I noticed in the letter that
20 it refers to CE No. 2, CE No. 5, CE No. 8. I assume those are
21 all separate documents, and I assume the Court has reviewed
22 those. And if the Court's ruling is the same, we would ask
23 that those also be marked as Court's exhibit and filed under
24 seal.

25 THE COURT: I have not received, I guess, what's

1 been -- what was referred to as the letter and the personal
2 improvement plan. Critical elements numbers 2, 5, and 8, they
3 are referenced in the plan, but critical element 2 is organized
4 planning and coordinating; though, there is an outline of what
5 needs to be achieved to meet that. Critical element 5 is
6 maintain high professional standards. Critical element number
7 8 is intelligence.

8 Certainly, those three areas are subject to
9 cross-examination, if you wish.

10 MR. WEINERMAN: Well, Judge, without the document, I
11 would be hesitant to -- to dive into it. So if those -- all
12 I'm asking is if the Court has reviewed those and we don't --
13 the Court doesn't feel there's anything exculpatory and then
14 that they just, again, be made part of the record and filed
15 under seal.

16 THE COURT: It will be made part of the record.

17 Anything the government wants in the record with regard to
18 those documents?

19 MR. SINHA: No, Your Honor. My understanding, for
20 what it's worth -- and I don't have the document in front of
21 me -- is that what the Court has is the performance improvement
22 plan, and that the -- just to be clear, I think that's the
23 whole of the performance improvement plan. I do know it
24 references the critical elements, but I don't think that
25 that's -- I think that that's just things that a federal

1 employee has, is critical elements of his or her employment. I
2 don't think it's part of the performance plan, that I'm aware
3 of. It's not a separate document, I guess, is what I'm saying.

4 THE COURT: I don't have a separate document
5 outlining the standards or some sort of internal standards
6 document of either the Department of Justice or the FBI. It
7 just references certain critical elements. But in terms of the
8 particular critical elements, which I believe it's relevant to
9 the performance in this case, is critical element number 5,
10 which, I believe, is maintaining high professional standards.

11 I think that speaks for itself.

12 MR. WEINERMAN: So is, then, if I were to ask him
13 whether he has been -- I'm searching for the right word --
14 disciplined -- I'll just use that word -- and maybe that's the
15 wrong word -- is the Court saying I can ask him whether he has
16 been disciplined -- sanctioned -- I'm not sure we can come up
17 with the correct description -- for not maintaining high
18 professional standards in his work in this case?

19 MR. SINHA: So, Your Honor, I guess our position
20 is -- and I think it says this in the letter and in the motion,
21 and it may say this, frankly, in the performance improvement
22 plan -- this is not a discipline. It's not a sanction. It
23 really is just an internal -- an internal, you know,
24 performance.

25 THE COURT: It's an improvement plan.

1 MR. SINHA: Yes.

2 THE COURT: I think they can ask, "Isn't it true that
3 based on your performance in the Johnson case, you had to meet
4 with your supervisor and come up with a plan to improve your
5 level of professionalism because of your investigation into the
6 Johnson case?"

7 That seems to cover it.

8 MR. WEINERMAN: I'll make sure I get with the court
9 reporter and ask him the question just like that.

10 THE COURT: Thank you.

11 MR. WEINERMAN: Thank you.

12 THE COURT: Is that going to be our next witness?

13 MR. SWEET: He is, Your Honor. And there are a
14 series of exhibits that -- a very -- probably 50, or so,
15 exhibits that we're going to be offering through Special
16 Agent Schoening. I have a list for Ms. Pew. The defense has a
17 list.

18 There are some of the exhibits that the defense is not
19 objecting to their admission, but because they're voluminous,
20 we want to give everybody a little time to make sure there's
21 nothing buried in there that is irrelevant. So we're not going
22 to be asking the majority of them to be published to the jury
23 today. We're just laying the foundation. And then over the
24 next few days we'll sort through them. But we will be moving
25 through those quickly.

1 And now that it seems we will have a stipulation for
2 residency, which I think we're drafting, we will -- the
3 government will shorten its section on residency and just --
4 and just seek to admit a whole bunch of documents. So I don't
5 think -- I think we'll be done by -- the government will
6 certainly be done in 35 minutes or so.

7 THE COURT: Okay. Great. Thank you.

8 All right. Let's get the jury.

9 MR. SWEET: Actually --

10 THE COURT: Ten minutes maybe?

11 MR. SWEET: Your Honor, if I can just update Special
12 Agent Schoening as to what we are and aren't talking about now?

13 (Jury present.)

14 THE COURT: Next witness for the government.

15 MR. SWEET: The government calls Special Agent
16 Forrest Schoening.

17 THE COURT: Step up to the witness stand and remain
18 standing for just a moment. We'll have you sworn in.

19
20 FORREST SCHOENING,
21 called as a witness in behalf of the Government, being first
22 duly sworn, is examined and testified as follows:

23
24 THE WITNESS: Yes, I do, ma'am.

25 DEPUTY COURTROOM CLERK: Please be seated. State

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1 your name for the record, spelling your first and last.

2 THE WITNESS: My name is Forrest Schoening.

3 F-o-r-r-e-s-t. S-c-h-o-e-n-i-n-g.

4 THE COURT: All right. Mr. Sweet, go ahead, please.

5

6 DIRECT EXAMINATION

7 BY MR. SWEET:

8 Q. Tell us how you're employed.

9 A. I'm a special agent with the Federal Bureau of
10 Investigation.

11 Q. And how long have you been a special agent for?

12 A. In August it will be 16 years.

13 Q. And what did you do before joining the FBI?

14 A. I was an intelligence officer in the United States Marine
15 Corps.

16 Q. How long did you do that for?

17 A. About six and a half years.

18 Q. And what rank did you leave the Marine Corps?

19 A. Captain, which is an O-3.

20 Q. Before joining the Marine Corps, what did you do?

21 A. I went to college.

22 Q. Now, for the FBI, do you investigate a variety of cases
23 and crimes?

24 A. Yes, I do.

25 Q. Have you been involved in the investigation of

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1 Daniel Stephen Johnson for several years?

2 A. Yes. I opened the investigation, and I've been the case
3 agent ever since.

4 Q. And have you written numerous reports and interviewed
5 multiple people?

6 A. Yes.

7 Q. Do you remember every detail of every report that you have
8 written in this case?

9 A. No, I certainly don't.

10 Q. Do you have with you some reports and documents that
11 you've written or reviewed in this case?

12 A. Yes, I do.

13 Q. And so if I ask a question that you don't recall the
14 answer to but you have a document for, please -- please ask and
15 let us know what you will be looking at, and we can discuss
16 using that to refresh your recollection.

17 A. Okay.

18 Q. So, first, I would like to ask you some questions
19 regarding Mr. Johnson's residency. Have you had the
20 opportunity to look at some documents regarding what state he's
21 resided in?

22 A. Yes, I have.

23 Q. And what -- what did you determine, please?

24 A. That he's a resident of Oregon.

25 Q. Okay. And I would like to turn you to Exhibit 220 and ask

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1 that this one be published, please.

2 A. All right.

3 Q. What is Exhibit 220, please?

4 A. That's a printout of his Oregon driver's license.

5 Q. For Daniel Stephen Johnson?

6 A. Yes.

7 Q. What is the issue date of the Oregon driver's license?

8 A. 4/14 of 2010.

9 Q. And what is Mr. Johnson's date of birth, please?

10 A. 4/18 of 1978.

11 Q. Okay. Have you had the opportunity to review some
12 passport records of Mr. Johnson?

13 A. Yes, I have.

14 Q. And, specifically, were these applications for passports?

15 A. Yes.

16 Q. Were those sworn statements in those applications?

17 A. Yes, they were.

18 Q. And did they list an address in the applications?

19 A. Yes, they did.

20 MR. SWEET: I would like to pull up Exhibit 210,
21 please, and ask that that be published as well.

22 THE COURT: It will.

23 BY MR. SWEET: (Continuing)

24 Q. Let's go to page 8, please. Special Agent Schoening, on
25 page 8, are you able to see a listed address on there? We can

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1 expand it if --

2 A. Yes.

3 Q. And what is that address, please?

4 A. 63341 Shasta Road in Coos Bay, Oregon.

5 Q. And is that the listed address for Daniel Stephen Johnson?

6 A. Yes, it is.

7 Q. And looking at the bottom of that, what is the date on
8 which that is signed?

9 A. April 13th of 2010.

10 Q. And this is an example of one of the documents that's
11 under oath?

12 A. Yes.

13 Q. And so did you review other applications or passports or
14 renewal of getting more pages added to your passport for
15 Mr. Johnson?

16 A. Yes, I did.

17 Q. And did you see the same address for 63341 Shasta Road in
18 Coos Bay, Oregon, listed for other years as well?

19 A. Yes, I did.

20 Q. And, specifically, did you see that for 2003?

21 THE COURT: Mr. Sweet, I'll have you slow down just a
22 bit. We're firing off a lot of quick questions.

23 MR. SWEET: Thank you, Your Honor. I'll do that.

24 BY MR. SWEET: (Continuing)

25 Q. And did you see that for the year 2003?

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1 A. Yes.

2 Q. 2006?

3 A. Yes.

4 Q. 2013?

5 A. Yes.

6 Q. Okay. And Special Agent Schoening, have you also reviewed
7 financial records and credit card records for Mr. Johnson?

8 A. Yes, I have.

9 Q. And did those cover a period of several years prior to
10 Mr. Johnson's arrest?

11 A. Yes, they did.

12 Q. And did those records list an address for Mr. Johnson?

13 A. Yes.

14 Q. And do you recall what that address was?

15 A. It's the same address that was on the passports and the
16 driver's license.

17 Q. The Shasta Road address?

18 A. Yes.

19 Q. And did you specifically review Capital One records?

20 A. Yes.

21 Q. Citi credit card records?

22 A. Yes.

23 Q. Discover card records?

24 A. Yes.

25 Q. And Oregon Pacific Bank records?

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1 A. Yes.

2 MR. SWEET: Your Honor, the government would ask the
3 following exhibits be admitted: Exhibit 220, 210, 177, 178,
4 180, and 186.

5 THE COURT: Is there any objection, or do we need
6 time to review?

7 MR. WEINERMAN: I think we need some time to review
8 just to make sure.

9 THE COURT: Okay. We'll do that, and we'll make a
10 ruling at a later time.

11 BY MR. SWEET: (Continuing)

12 Q. And, Special Agent Schoening, do you know where
13 Daniel Stephen Johnson was born?

14 A. In Oregon.

15 Q. And do you recall what city?

16 A. Dallas, I believe.

17 Q. And have you also had the opportunity to review travel
18 documents for Mr. Johnson?

19 A. Yes.

20 Q. And, specifically, have you reviewed a copy of one of his
21 passports?

22 A. Yes.

23 Q. And was that a United States passport?

24 A. Yes, it was.

25 Q. And did you also review Customs and Border Patrol records,

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1 inspection records, relating to Mr. Johnson?

2 A. Yes, I did.

3 Q. And did those show that Mr. Johnson, when he was traveling
4 overseas, that he did so on a U.S. passport? And I'm going to
5 list some years, please. In 2002?

6 A. Yes.

7 Q. 2003?

8 A. Yes.

9 Q. 2005?

10 A. Yes.

11 Q. 2006?

12 A. Yes.

13 Q. 2009?

14 A. Yes.

15 Q. And 2014?

16 A. Yes.

17 MR. WEINERMAN: And then, Your Honor, those would be
18 Exhibits 181 and 183. I understand that defense may need more
19 time, but those are also ones we would be asking to be
20 admitted.

21 THE COURT: Folks, we won't show you all of the
22 documents at this time. Some of them will likely be admitted,
23 and you'll have them to review during deliberations.

24 MR. SWEET: Thank you, Your Honor.

25 And, Your Honor, at this time I would like to read in one

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1 of the stipulations that the parties reached regarding travel.

2 THE COURT: All right. Folks, the stipulation is
3 something both parties agree upon. You can accept it and
4 should accept it as true.

5 MR. SWEET: Your Honor, because it is lengthy and
6 detailed, I'll read the main paragraphs and a short example
7 from each below.

8 Stipulation: The parties agree that Mr. Johnson's TECS,
9 T-E-C-S, records, airline records, passport and U.S. and
10 Cambodian immigration records, including records regarding
11 immigration status, travel, and entry and exit data may be
12 admitted and that the information contained in those records is
13 true and accurate.

14 Number two: The parties agree that Mr. Johnson became a
15 United States citizen at birth and that he has remained a U.S.
16 citizen continuously and without interruption from the time of
17 his birth to present.

18 Three: The parties agree and stipulate that Mr. Johnson
19 traveled in interstate and foreign commerce between the
20 United States and Cambodia between on or about the following
21 dates -- and I'm just going to read the first one --
22 November 28, 2005, departing the U.S. and then December 6,
23 2005, arriving in Cambodia.

24 The next paragraph says, "The parties further agree and
25 stipulate that Mr. Johnson was present within the District of

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1 Oregon and then traveled in interstate and foreign commerce
2 between the United States and Cambodia between on or about the
3 following dates" -- and reading just the first one -- "June 21,
4 2011, in Oregon; July 5, 2011, departed the U.S.; and then
5 July 7, 2011, arrived in Cambodia."

6 BY MR. SWEET: (Continuing)

7 Q. Special Agent Schoening, have you reviewed the travel
8 dates I just listed as well as other travel dates as set forth
9 in that stipulation?

10 A. Yes, I have.

11 Q. And do you -- is it your understanding that those travel
12 dates are based off of various supporting records?

13 A. Yes.

14 Q. And have you had an opportunity to review those supporting
15 records?

16 A. Yes, I have.

17 MR. SWEET: And, Your Honor, this is a fairly long
18 list. With the Court's permission, I'm just going to read it,
19 ask that none of this be published, and just slowly read it
20 into the record.

21 THE COURT: Thank you.

22 MR. SWEET: Thank you.

23 BY MR. SWEET: (Continuing)

24 Q. Exhibit 173, AirAsia records; Exhibit 174, American
25 Airlines records; Exhibit 175, Asiana Airlines records;

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1 Exhibit 176, Cambodian entry and exit records; Exhibit 179,
2 trip itinerary; Exhibit 182, TECS records; Exhibit 184 TECS --
3 which is T-E-C-S, all caps -- person list; Exhibit 185 American
4 Airlines records; Exhibit 187, Cambodian travel history report;
5 Exhibit 188, Department of State passport details; Exhibit 189,
6 confirmation and itinerary; Exhibit 190, itinerary;
7 Exhibit 191, bus ticket; Exhibit 193, AirAsia records; and
8 Exhibit 223, Facebook IP records.

9 And, Your Honor, again, we would ask that those all be
10 admitted, and we can discuss those further.

11 THE COURT: All right.

12 BY MR. SWEET: (Continuing)

13 Q. Special Agent Schoening, I have what seems like a very
14 simple question, but is Cambodia a foreign country?

15 A. Yes, it is.

16 Q. And to get there, do you have to travel in foreign
17 commerce?

18 A. Yes, you do.

19 Q. And in order to travel from Oregon to Cambodia, do you
20 have to cross the state line?

21 A. Yes.

22 Q. Okay. Could I ask you to speak -- I think the microphone
23 is actually -- it's a little silver dot.

24 THE COURT: The large microphone is for the
25 translator, but the silver dot there is what is picking up your

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1 voice.

2 THE WITNESS: Okay.

3 THE COURT: Thank you.

4 THE WITNESS: Thank you.

5 BY MR. SWEET: (Continuing)

6 Q. Special Agent Schoening, did you travel to Cambodia in
7 December of 2014?

8 A. Yes, I did.

9 Q. And did you meet with Daniel Stephen Johnson when you were
10 in Cambodia?

11 A. Yes.

12 Q. Did you accompany Mr. Johnson from Cambodia to the United
13 States?

14 A. Yes, I did.

15 Q. And was the first location in the United States that you
16 and Mr. Johnson arrived at Portland, Oregon?

17 A. Yes, it was.

18 Q. Okay. I would like to show you what's marked as
19 Exhibit 221, please.

20 MR. SWEET: If that could -- we can -- if there's no
21 objection from the defense -- that's an itinerary -- I would
22 ask that 221 be published.

23 MR. WEINERMAN: Just the one page?

24 MR. SWEET: It is just one page. It is just one
25 page.

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1 Counsel, do you have any objection to that?

2 MR. WEINERMAN: Let me -- can we scroll up a little
3 more, so I can see the whole document?

4 MR. SWEET: The top or the bottom, Counsel?

5 MR. WEINERMAN: I want to see the bottom, please.

6 No objection.

7 THE COURT: All right. 221 will be received.

8 BY MR. SWEET: (Continuing)

9 Q. Special Agent Schoening, could you please walk us through
10 the itinerary, including the departure date, the cities that
11 you and Mr. -- cities or countries that you and Mr. Johnson
12 traveled to and then your arrival date?

13 MR. WEINERMAN: Based on the stipulation, objection.
14 Relevancy.

15 THE COURT: Overruled.

16 Go ahead.

17 THE WITNESS: So we departed Phnom Penh on
18 December -- December 22nd of 2014. We flew to Seoul,
19 South Korea, where we had about a 12-hour layover. We departed
20 Seoul on December 23rd and flew to Vancouver, Canada. I
21 believe the layover there was about two hours, maybe an hour
22 and a half, and then we flew from Vancouver -- on December 23rd
23 we departed Vancouver and flew into Portland, Oregon.

24 BY MR. SWEET: (Continuing)

25 Q. So then your arrival date in Portland, Oregon, one more

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1 time, was?

2 A. I'm sorry. It was December 23rd of 2014.

3 Q. Okay. And were you -- was that -- was Portland, Oregon,
4 the first location in the U.S. that Mr. Johnson arrived after
5 leaving Cambodia?

6 A. Yes.

7 Q. Special Agent Schoening, going -- going back a bit, what
8 was the date that Daniel Johnson was arrested in Cambodia by
9 the Cambodians?

10 A. That was December 9th of 2013.

11 Q. And do you know if digital devices were seized from him at
12 that time?

13 A. Yes.

14 Q. And were -- did you also seize two digital devices from
15 Mr. Johnson when you met him in Cambodia?

16 A. Yes.

17 Q. Special Agent Schoening, did you subsequently obtain a
18 search warrant for the digital devices seized from Mr. Johnson?

19 A. Yes. For those and for the ones that I seized.

20 Q. I'm going to ask you about some documents. Did you review
21 the contents -- you and another agent review the contents of
22 those digital devices after the search warrant?

23 A. Yes, we did.

24 Q. And did you locate documents relating to Hope Transition
25 Center, the children staying there, that kind of thing?

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1 A. Yes.

2 Q. Okay. I would like to show you Government's Exhibit 157,
3 please. If there's no objection, I'll ask that that be
4 published.

5 MR. WEINERMAN: No objection.

6 THE COURT: It will be received and published.

7 BY MR. SWEET: (Continuing)

8 Q. And, Special Agent Schoening, the green highlighting was
9 added by the government, but do you recognize this document?

10 A. Yes. It's a list of some of the individuals that were at
11 the orphanage.

12 Q. And does it list dates, approximate dates, in which
13 children arrived and their age on arrival?

14 A. Yes, it does.

15 MR. SWEET: And Exhibit 159, please.

16 BY MR. SWEET: (Continuing)

17 Q. Could you identify 159, please?

18 A. It's another list or roster of some of the individuals
19 that were at the orphanage and their dates of birth.

20 MR. SWEET: And then 158. And if -- I believe with
21 no objection, I would ask that this be published, Your Honor.

22 MR. WEINERMAN: One page?

23 MR. SWEET: No. It's --

24 MR. WEINERMAN: Can we defer ruling on this one?

25 It's been a while since we read this one.

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1 THE COURT: That's fine.

2 BY MR. SWEET: (Continuing)

3 Q. Let me ask you this, Special Agent Schoening, were there
4 several documents related to, sort of, the operation of
5 Hope Transition Center which you found as well?

6 A. Yes.

7 MR. SWEET: And, specifically, Exhibits 158 and 160,
8 I'll show you 160, since you just saw 158. 160 can just be to
9 Special Agent Schoening.

10 THE WITNESS: Yes.

11 BY MR. SWEET: (Continuing)

12 Q. Okay. And so for these documents we just discussed
13 regarding the boys' ages and the Hope Transition documents, do
14 you know where those were found?

15 A. They were found on one of the digital devices. The way
16 our system is set up, it's hard to sometimes go back and
17 remember which exact item; but I believe it was the computer.

18 Q. And --

19 MR. SWEET: At this point, Your Honor, so we don't
20 get too far ahead, I would ask that 221, 157, 159, 158, and 160
21 be admitted, understanding --

22 THE COURT: I'll defer ruling until after defense has
23 had time to review.

24 BY MR. SWEET: (Continuing)

25 Q. Did you also locate, sort of, information sheets for the

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1 boys? Sort of a summary for each boy for a sponsor?

2 A. Yes.

3 Q. I would like to show you -- I would like to show you an
4 example of one.

5 MR. SWEET: 195, please. Let's go to -- let's try
6 202, please.

7 And if there's no objection, I would ask that that be
8 published, Your Honor.

9 MR. WEINERMAN: No objection to this.

10 THE COURT: All right. 202 will be published.

11 BY MR. SWEET: (Continuing)

12 Q. Is that one of the sheets that we're talking about,
13 Special Agent?

14 A. Yes, it is.

15 Q. What is it that's on there, please? What kind of
16 information is there?

17 A. General information. Name, date of birth, age, gender,
18 and then general subjects, like, you know, animals, I guess,
19 that they like, maybe. Food, sports, cars. Interests, I
20 guess, of the children.

21 Q. Okay. And did you find those for a series of the boys
22 involved with this case?

23 A. Yes.

24 Q. Okay.

25 MR. SWEET: And, Your Honor, the government is

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1 offering for information sheets for the boys 195, 200, and 202
2 through 209.

3 THE COURT: All right. I'll defer ruling. I'll give
4 the defense a chance to review it before they're admitted.

5 BY MR. SWEET: (Continuing)

6 Q. And, Special Agent Schoening, the majority of the
7 documents that we're discussing, the children's information
8 sheet, as well as the Hope Transition Center documents, is it
9 your recollection that they were on one of the computer --
10 either the computer or the laptop?

11 A. Yes.

12 Q. I'd like to show you Government's Exhibit 201. Could you
13 identify that, please?

14 A. That's a letter of recommendation that Mr. Johnson wrote
15 concerning BT XXXXXXXXXX.

16 Q. And I'd like to read --

17 MR. SWEET: I would ask that this be published,
18 Your Honor.

19 MR. WEINERMAN: That's fine. No objection to this
20 one.

21 THE COURT: All right. It will be.

22 BY MR. SWEET: (Continuing)

23 Q. If we can zoom in on the top half of that, please, I'd
24 like to read a little bit of this and ask if this is correct.
25 Is this a letter from Daniel Johnson?

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1 A. Yes.

2 Q. "To Whom it May Concern: I would like to share with you a
3 little bit about BT XXXXXXXXXXXXXXXXXXXX. There are few young men
4 like this one. BT XXXX is one of the most extraordinary young
5 men I have ever met. From the day that I met him, I knew that
6 he had a higher calling. BT XXXX is a respectful,
7 intellectual, bold, prompt, and a God-fearing man. He is
8 humble and moldable, always eager to learn and willing --
9 willing to admit when he is wrong."

10 Is that -- is that accurate? Is that what Mr. Johnson
11 wrote regarding BT XXXXXXXX?

12 A. Yes.

13 Q. And what is the date on that, please?

14 A. May 1st of 2013.

15 Q. And, Special Agent Schoening, I would like to show you --
16 I would like to show you a board with some of the orphanage
17 locations on there.

18 MR. SWEET: Your Honor, this is something that
19 Counsel has seen previously and I do not believe has any
20 objection to this being shown to the jury.

21 MR. WEINERMAN: We may have some questions relating
22 to foundation that we would like to ask before it's admitted.
23 So questions in aid of objection.

24 THE COURT: Okay. Do you want to ask those now?

25 MR. WEINERMAN: I think the better way is for Counsel

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1 to ask preliminary questions and when we feel we've reached
2 that point --

3 THE COURT: Okay. Go ahead and lay a foundation.

4 MR. SWEET: If I may, then, Your Honor, just for --
5 so Special Agent Schoening can see it, can I set it up over
6 here?

7 THE COURT: Yes.

8 BY MR. SWEET: (Continuing)

9 Q. I'm sure there's a better way, but I think for a moment
10 this might -- can you see that Special Agent Schoening?

11 A. Yes, I can.

12 Q. So can you tell us what is on that board, please?

13 A. There's a diagram for each location that -- or for three
14 locations that the orphanage had been operating out of, along
15 with the corresponding time frame, and then some photographs.

16 Q. And so you're referring to Mr. Johnson's Hope Transition
17 Center Orphanage; is that correct?

18 A. Yes.

19 Q. And are you aware that it was at three different
20 locations?

21 A. Yes.

22 Q. And potentially more, but at least three different
23 locations that have been addressed in this case?

24 A. Correct.

25 Q. Okay. And in terms of -- in terms of the dates for

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1 when -- the dates for each location, let's start with -- let's
2 start with the last date. What -- where do you have location
3 three being active until?

4 A. I believe that was the location that he was living and
5 working at when he was arrested.

6 Q. Okay. What's the date at which you have -- what's the
7 last date on there, please?

8 A. The last date on the --

9 Q. Yes. The last date of which it shows location three
10 was -- was still --

11 A. December of 2013.

12 Q. Okay. And is that the month in which Mr. Johnson was
13 arrested?

14 A. Yes, it is.

15 Q. Okay. And what's the date that you show the orphanage
16 moving to location three?

17 A. September of 2012.

18 Q. Okay. And had you reviewed -- looked at records, be it a
19 lease or other documents?

20 A. Yes.

21 Q. And in terms of location two, what do you have for the end
22 date of location two, please?

23 A. August of 2012.

24 Q. And what do you have as the start date for location two,
25 please?

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1 A. July of 2011.

2 Q. Okay. And what do you have as the end date for location
3 one?

4 A. June of 2011.

5 Q. Do you recall what records it was -- what kinds of records
6 you reviewed in confirming those dates?

7 A. There were a couple of documents that we found on the
8 computer. And then I believe some Facebook records as well.

9 Q. Okay. Now, the first date, though, the start date for
10 location one, is that a date that you have come across
11 information for?

12 A. I don't remember specific information on the start date,
13 but I think it's generally correct.

14 Q. Okay. Now, what about the diagrams? How did you -- what
15 information do you have in the diagrams that are for each
16 location?

17 A. Other than what's marked or what's marked?

18 Q. Just what's marked, please.

19 A. Just what the various areas are, whether it's a dining
20 room or a common area, then Mr. Johnson's bedroom.

21 Q. And how is it that those diagrams came to be created?

22 A. We interviewed. And when I say "we," I interviewed some
23 and some other agents interviewed other people that were
24 familiar with orphanages, and they kind of sketched them out,
25 and we turned the sketches into diagrams.

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1 Q. And have you shown those diagrams to other people, as
2 well, for corrections and clarifications?

3 A. Yes.

4 Q. And from that, do you believe you have information such
5 that you could indicate where Daniel Johnson's room was?

6 MR. WEINERMAN: I'll object and ask that I be able to
7 ask some questions at this time.

8 THE COURT: Go ahead.

9 MR. WEINERMAN: So it's -- it's a little far for me
10 to see, but if I may approach, so I can see, Your Honor?

11 THE COURT: Yes.

12 MR. WEINERMAN: Thank you.

13 So we're talking now about the sketches on the top row of
14 this poster board; correct?

15 THE WITNESS: Yes, sir.

16 MR. WEINERMAN: And you have indicated -- I assume
17 you're the ones who have labeled the particular rooms and
18 buildings? So, in other words, look at location three. You've
19 indicated where certain places were. Laundry, kitchen, TV
20 room, et cetera; correct?

21 THE WITNESS: They were labeled when I was given the
22 diagram, sir, and I showed them to one of the witnesses, and he
23 made corrections.

24 MR. WEINERMAN: So you didn't label them?

25 THE WITNESS: Not originally, no.

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1 MR. WEINERMAN: So would it be fair to say that for
2 all three of these locations the labels of where rooms were was
3 based on what somebody else told you?

4 THE WITNESS: Yes.

5 MR. WEINERMAN: You've never been in any of these
6 locations yourself?

7 THE WITNESS: No, I haven't.

8 MR. WEINERMAN: That's all the questions I have,
9 Judge. I would object. It's based on hearsay.

10 THE COURT: Mr. Sweet?

11 MR. SWEET: Well, Your Honor, I think we can probably
12 turn to the defense exhibits and get a lot of that information,
13 but we can wait until we do that to admit that, so that's fine.

14 In terms of the labels, I'm happy to wait until we can --
15 until we can supplement that.

16 THE COURT: It seems we have plenty of witnesses that
17 were available and could clarify the accuracy of the diagrams
18 based on their residence in these three places. So I think we
19 can get it in, but I think through this particular witness it
20 is hearsay.

21 MR. SWEET: Absolutely.

22 BY MR. SWEET: (Continuing)

23 Q. And, Special Agent Schoening, I would like to -- we talked
24 a little bit about -- we've mentioned Facebook IP accounts. Is
25 one of the things the FBI used to determine Mr. Johnson's

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1 travel IP addresses for activity off of his Facebook?

2 A. Yes.

3 Q. And did you obtain a search warrant for two of

4 Mr. Johnson's Facebook accounts?

5 A. Yes, I did.

6 Q. Okay. And from that, did you obtain some of

7 Mr. Johnson's -- or many of Mr. Johnson's Facebook messages?

8 A. Yes, I did.

9 Q. And also voluminous Facebook IP data?

10 A. Yes.

11 Q. Did you also obtain a search warrant for what I'll call

12 the GaryDonna Johnson Facebook account?

13 A. Yes.

14 Q. And tell us, please, who are Gary and Donna Johnson?

15 A. Gary is Mr. Johnson's brother, and Donna is Gary's wife.

16 Q. Did you review the contents of those Facebook accounts as
17 well?

18 A. Yes, I did.

19 Q. From your review -- let me ask you this: Are we talking

20 hundreds of pages, thousands of pages, in terms of the volume

21 of Mr. Johnson's -- Daniel Johnson's Facebook account, roughly?

22 A. Just Mr. Johnson's?

23 Q. More than 1,000; more than 5,000?

24 A. It was probably 28- to 30,000 pages.

25 Q. And from reading -- and did you read the vast majority of

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1 those messages?

2 A. Yes and no. I read a redacted version of the Facebook
3 records.

4 Q. Okay. And were you able to determine that Mr. Johnson was
5 often able to access and use Facebook while he was in jail in
6 Cambodia?

7 A. Yes.

8 Q. So there are a few messages I would like to -- I would
9 like to turn to.

10 MR. SWEET: If I may, Your Honor, I'm going to take
11 that down since that hasn't been --

12 THE COURT: Yes.

13 BY MR. SWEET: (Continuing)

14 Q. Before going into the content of some of these messages, I
15 do have a question for you, Special Agent Schoening. Is it
16 true that based on your performance in the Daniel Johnson case
17 you had to meet with your supervisor to come up with a plan to
18 improve your level of professionalism because of your
19 investigation in the Johnson case?

20 A. Yes.

21 Q. And do you agree with that decision?

22 A. No, I don't.

23 Q. I'm going to show you some -- I'm going to show you some
24 Facebook chats, and I would like to turn your attention first
25 to 162. Exhibit 162.

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1 MR. SWEET: Your Honor, this is one I would ask, if
2 there's no objection from the defense, that it be published to
3 the jury.

4 MR. WEINERMAN: Other than previously.

5 THE COURT: With the previous objections, Exhibit 162
6 will be received.

7 BY MR. SWEET: (Continuing)

8 Q. And, Special Agent Schoening, let me ask you, first, who
9 is Becca Norris?

10 A. Becca Norris is a member of Calvary Baptist Church down in
11 Texas.

12 Q. And how does she come up? What is her role?

13 A. She handled a lot of the donations and contributions and
14 money.

15 MR. WEINERMAN: Objection. This is based on hearsay,
16 based on contacts or discussions with Rebecca Norris.

17 THE COURT: Overruled. I think from his
18 investigation he can clarify who this individual is.

19 BY MR. SWEET: (Continuing)

20 Q. And if you can just give a short summary of what her
21 connection was to the orphanage?

22 A. Sure. She -- she collected all the money that was donated
23 or offered and sent it to the ministry.

24 Q. Okay. And so did you review Facebook messages between
25 Daniel Johnson and Becca Norris?

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1 A. Yes, I did.

2 Q. And for Exhibit 162, what is the date, please, for the
3 start of this communication?

4 A. 05/26 of 2014.

5 Q. So May 26, 2014, was that after Mr. Johnson was arrested?

6 A. Yes.

7 Q. So I'm going to read some of it and ask you if you know
8 who this is talking about. So a message from Daniel Johnson.
9 "You rest and speak words of peace into SES XXX. SES XXX is
10 being fed by BT XX, and BT XX is being fed by Karla."

11 From reviewing these messages, who do you believe Sopheak
12 is?

13 A. Pastor Sopheak.

14 Q. And BT XX?

15 A. BT XXXXXXXX.

16 Q. And Karla?

17 A. Is Karla Comstock.

18 Q. And next, "But don't tell them that you know this because
19 they all don't know or understand what they're being led into.
20 The problem is they need to see it is hurting the body of
21 Christ. The silence is Golden Rule needs to be spoken into
22 their hearts and spirits. They are leaning on their own
23 understanding, yet they do not even understand."

24 Is that an accurate reading?

25 A. Yes, it is.

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1 Q. And in reviewing Mr. Johnson's Facebook communications
2 with various people, did you come across other messages in
3 which he would talk about the importance of not speaking out or
4 being silent?

5 A. Yes.

6 Q. I'd like to turn your attention to Government's
7 Exhibit 171. And this is a redacted version, just the -- just
8 a second.

9 MR. SWEET: So, Your Honor, what we've done is we've
10 taken the second page of Exhibit 171, which we discussed
11 earlier, we have redacted -- we have redacted out -- so a
12 fairly limited amount of text remains. I'll give the defense
13 the opportunity to review that and make sure that is consistent
14 with their understanding.

15 (Pause-in-proceedings.)

16 MR. WEINERMAN: That's fine.

17 MR. SWEET: I ask this be published to the jury,
18 Your Honor.

19 THE COURT: Yes.

20 MR. WEINERMAN: Exhibit number again? 171?

21 MR. SWEET: This is 171. Second page of 171.

22 MR. WEINERMAN: Oh, it's double-sided. I had both
23 pages, Judge.

24 THE COURT: All right.

25 ///

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1 BY MR. SWEET: (Continuing)

2 Q. Special Agent Schoening, let me ask you this: What
3 Facebook account is this message from in Exhibit 171?

4 A. It's from the GaryDonna Johnson account.

5 Q. Okay. And in reviewing the GaryDonna Johnson account, did
6 you see messages communicating with individuals in Cambodia
7 that are involved in this case?

8 A. Yes.

9 Q. And though this is only one message, did you see, you
10 know, a lot of messages, a few messages with people involved in
11 this case?

12 A. Numerous messages.

13 Q. Okay. And did those messages sometimes identify who the
14 author was who was using the GaryDonna Johnson account?

15 A. Yes.

16 Q. And who did it identify that as?

17 A. For the Cambodian individuals, it was usually or almost
18 always Gary.

19 Q. So the person in the U.S. communicating with the
20 Cambodian -- the author for the GaryDonna Johnson account
21 communicating with Cambodian individuals was usually Gary?

22 A. Yes.

23 Q. Or "almost always Gary" I think you said.

24 A. Yes.

25 Q. Okay. And was -- how could you determine that?

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1 A. Just by the text. A lot of times the other person would
2 say, "Hey, Bro," or sometimes they would say -- they'd put his
3 name in there. Gary.

4 Q. From your review of messages, did it appear that sometimes
5 messages were being relayed or copy-and-pasted from
6 Daniel Johnson through the Gary Johnson account?

7 A. Yes.

8 MR. WEINERMAN: Object as leading, and it calls for a
9 characterization. The best evidence is the chats themselves
10 and not his interpretation of them.

11 THE COURT: Overruled as to, you know, why he even
12 focused on these particular chats.

13 So go ahead.

14 THE WITNESS: Yes.

15 BY MR. SWEET: (Continuing)

16 Q. So I would like to read a portion of the unredacted
17 portion from 171. Well, let me ask you this: Are there
18 misspellings in some of the chats from the GaryDonna Johnson
19 account?

20 A. Yes. Some of them.

21 Q. Okay. Would you see -- would you see the word "BT XX" pop
22 up fairly frequently with a capital "B"?

23 A. Yes.

24 Q. And just from context and from looking at other messages,
25 who do you believe BT XX to be?

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1 A. BT XX.

2 Q. Please tell me if this is correct. "Please plan a visit
3 to BT XXX's family, along with Da Sothea. Explain to BT XXX's
4 family that BT XXXX should return to Cambodia because he, and
5 he alone -- all caps -- is planning on testifying against me in
6 exchange for citizenship. They need to know that I am in jail
7 because BT XXXX believe and is only thinking of himself. He
8 needs to retract and return to Cambodia. Offer them 10k as
9 though it's coming from Sinai -- it's from Sinai?" Is that
10 correct?

11 A. Yes.

12 Q. So, first of all, who do you believe -- do you know who
13 Sinai is?

14 A. It's Pastor Sinai.

15 Q. And did you see other messages involving Pastor Sinai?

16 A. Yes.

17 Q. As far as you know, was Gary Johnson in jail during the
18 time of these chats?

19 A. Not as far as I know.

20 Q. I would like to turn your attention to Exhibit 224,
21 please.

22 MR. SWEET: Your Honor, I would ask that this one be
23 published to the jury. It's between Daniel Johnson and
24 SO XXXXXXXX.

25 THE COURT: It will be published and received.

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1 MR. SWEET: 224.

2 BY MR. SWEET: (Continuing)

3 Q. So are you -- do you recall this -- do you recall this
4 chat? If we need to -- let's expand towards the bottom, the
5 bottom three paragraphs.

6 A. Yes, I do.

7 Q. I would like to read it and then ask you a question.

8 So is the author from the -- the first expanded paragraph,
9 is that Daniel Johnson?

10 A. Yes, it is.

11 Q. Okay. And what's the date that that message was sent,
12 please?

13 A. 5/26 of 2014.

14 Q. And was Mr. Johnson in jail in Cambodia at that time?

15 A. Yes.

16 Q. And does it say, "I don't understand why Christian cannot
17 see they hurt all Christian when they speak bad and make more
18 problem. God don't like this." Is that correct?

19 A. Yes.

20 Q. Okay. What did Mr. Johnson -- what's the next message
21 after that, please?

22 A. Did you want me to read that?

23 Q. Yes, please.

24 A. It says it's from Daniel Johnson. The recipient was
25 SO XXXXXXXXXXXXXXXX. It says, "Can you post that or write

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1 something like it and post?"

2 Q. Sorry. Can you say the last part louder again, please?

3 A. Yes. "Can you post that or write something like it and
4 post?"

5 Q. And were those two messages sent close in time to each
6 other? First, the suggested text and then the request?

7 A. Yes. About a minute apart.

8 Q. Actually, just looking at it, I mean, it's --

9 MR. WEINERMAN: Objection. The document speaks for
10 itself.

11 THE COURT: I'll allow him to ask questions about the
12 document.

13 BY MR. SWEET: (Continuing)

14 Q. So 13:01:50 is the first message?

15 A. Yes.

16 Q. 13:02:05 seconds?

17 A. Yes.

18 Q. So approximately 15 seconds apart?

19 A. Yes.

20 MR. SWEET: I have one more of these. Exhibit 286,
21 please.

22 Your Honor, this is one of the -- we have switched the --
23 the raw data is available as part of this exhibit, but a
24 streamlined version of the same text is what is depicted. And
25 after Counsel has an opportunity to review it, I would ask that

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1 286 be published.

2 MR. WEINERMAN: No objection.

3 THE COURT: All right. It will be published. It's
4 already received.

5 BY MR. SWEET: (Continuing)

6 Q. And, Special Agent Schoening, who is this message -- who
7 are these messages from and who are they to?

8 A. From Mr. Johnson to SO XXX.

9 Q. Okay. And so this is fairly long. So there are just
10 parts of this I would like to highlight. Please tell me if
11 this is correct.

12 And what's the date of these chats, please?

13 A. June 28th of 2014.

14 Q. "I love you forever and nothing you or anyone can say or
15 do to change that will ever change my heart and feelings for
16 you. I pray that you will come and see me and we can talk face
17 to face. I have many things to tell you, but I refuse to do it
18 through electronics. My heart is torn and broken for so many
19 reasons now. Mostly because you are looking for any reason to
20 abandon me right now."

21 Going down below, "I love you so much, sweet son, and I
22 miss you. My heart is bleeding while waiting to see you face
23 to face."

24 Below, "Waiting for the day I can be together with you
25 free so I can show you that I always -- I will always be by

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1 your side to walk with you, to help you stand when you are
2 weak, to catch you when you fall, to help you stand -- to help
3 stand you back up, to be there for you when no one else is, to
4 die for you if needed."

5 Are those correct so far?

6 A. Yes.

7 Q. And, finally, does it end, "I'm very destroyed. You don't
8 talk with me like before, son. I can feel you pulling away
9 from me, so I tried to honor your feelings and give you some
10 space. My heart is as strong as ever for you and even if your
11 heart and mind changes from the words you have spoken to me,
12 mine never will change because what I told you is true
13 forever."

14 Is that correct?

15 A. Yes.

16 Q. And did you find multiple Facebook messages,
17 Special Agent Schoening, between Daniel Johnson and many of the
18 boys?

19 A. Yes.

20 MR. SWEET: Your Honor, given the volume, if I may, I
21 would just like to read the exhibit number, and I understand
22 ruling may need to be deferred, but just to lay the foundation
23 for their admission.

24 THE COURT: All right.

25 MR. SWEET: Exhibit 162, 165, 166, 167, 169, 170,

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1 171, 224, 276, 277 -- 277 through 289, 291, 293, 299, 304, and
2 that is -- those are the Facebook chats.

3 BY MR. SWEET: (Continuing)

4 Q. I only have a couple more things, Special Agent Schoening.

5 Have you reviewed on audio that is a recording of an
6 in-person conversation between Mr. Johnson and his relatives?

7 A. Yes.

8 Q. Okay. And was that audio from January 21, 2015?

9 A. Yes.

10 Q. And do you recall if that audio is Exhibit 197?

11 A. I believe so.

12 MR. SWEET: Your Honor, we're not asking it be played
13 but just asking that that be admitted.

14 MR. WEINERMAN: No objection --

15 THE COURT: All right. It will be received.

16 MR. WEINERMAN: -- other than previously made.

17 DEPUTY COURTROOM CLERK: What exhibit was that?

18 MR. SWEET: 197.

19 BY MR. SWEET: (Continuing)

20 Q. So wrapping up, Special Agent Schoening, did you interview
21 BT XXXXXXXX as part of this investigation?

22 A. Yes. Several times.

23 Q. And do you recall the date of your first interview with
24 him?

25 A. April 17, I believe, of 2014.

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1 Q. Feel free to check if that would help you.

2 A. April 17 of 2014 was the first time I interviewed him.

3 Q. April 17th of 2014?

4 A. Yes.

5 MR. SWEET: I just have one clerical clarification.

6 I said 304 for one of the last exhibits. I should have said

7 305. Not 304. I apologize.

8 BY MR. SWEET: (Continuing)

9 Q. Special Agent Schoening, where did you interview

10 BT XXXXXXXX?

11 A. At the Fry Road Nursery in Albany.

12 Q. Did he know you were coming?

13 A. No, he didn't.

14 Q. Had you spoken with him before you went to the nursery?

15 A. No.

16 Q. Had he made any efforts to contact you?

17 A. Not that I know of.

18 Q. Okay. And while working on this case, did you come across

19 a document which named or had BT XXXXXXXX mentioned in it?

20 A. It had him by his Cambodian name, which was BT XXXXXXXXXX.

21 Q. Okay. Is that what led you to go talk with BT XXXXXXXXXX

22 or BT XXXXXXXX?

23 A. Yes.

24 Q. After speaking with BT XXXXXXXX, did you later try to

25 figure out how he could stay in the U.S. to be available for

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1 trial?

2 A. Yes, I did.

3 Q. Okay. Is that something a -- a process that you were
4 familiar with?

5 A. No.

6 Q. And did you reach out to Immigration and Customs
7 Enforcement about that?

8 A. Yes, I did.

9 Q. And did they put you in touch with someone?

10 A. Yes. An immigration attorney that they had worked with in
11 the past.

12 Q. And then did you facilitate that immigration attorney
13 getting in touch with BT XXXXXXXX?

14 A. Yes.

15 Q. And, Special Agent Schoening, when you first met
16 BT XXXXXXXX on April 17th of 2014, did he talk to you about any
17 sexual abuse?

18 A. Yes, he did.

19 Q. Did he mention discussing sexual abuse by Daniel Johnson
20 to him?

21 A. Yes.

22 Q. And, in summary -- and summary is fine -- what did he say?

23 A. That he -- I believe, initially, it was that he had been
24 abused five or six times. He didn't go into too much detail as
25 far as the specific instances. That was in a later interview,

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1 once he got a little bit more comfortable with me. He also
2 stated that he was basically afraid of Mr. Johnson. He was
3 afraid of retaliation.

4 Q. And, Special Agent Schoening, I just have -- I just have
5 one last question. There's one more Facebook chat that I would
6 like to -- I would like to bring up, and that is 305.

7 I'll give Counsel a minute, because we discussed this
8 earlier, but then I believe we --

9 MR. SWEET: At this point, if we can just have it
10 published to Counsel.

11 MR. WEINERMAN: No objection.

12 THE COURT: All right. It will be received. It can
13 be read into the record if you wish.

14 MR. SWEET: Thank you, Your Honor.

15 BY MR. SWEET: (Continuing)

16 Q. Special Agent Schoening, is this message from the
17 GaryDonna Johnson Facebook account to the SO XXXXXXXXXXXXXXXX
18 account?

19 A. Yes, it is.

20 Q. What's the date, please?

21 A. January 30th of 2015.

22 Q. And does it say --

23 MR. SWEET: And if this could be published to the
24 jury, please.

25 THE COURT: Yes. Sorry. I thought it was.

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1 BY MR. SWEET: (Continuing)

2 Q. Does it say, "Get a hold of BT XXXXX XXXXXXXXXXXXXXX family.
3 Try to get them to talk BT XX into stopping what he's doing to
4 Daniel. Let them know he can recant his accusations on Daniel.
5 It would be the right thing to do. Also, our dad is very sick,
6 and he needs to see he's son. This is killing him. Thanks.

7 This would end this terrible action against Daniel for
8 good. Then Daniel could have a solid case on suing FBI. He
9 would be able to pay everyone back.

10 Also help BT XX gets out of Cambodian prison. Because
11 when they get what they want, they will extradite him back.
12 This is a guarantee they never ever keep their promises. This
13 could be a happy ending for everyone except the FBI.

14 Also pass on not to talk about the case about
15 Daniel unless it's Daniel's attorney." Is that accurate?

16 A. Yes.

17 MR. SWEET: Thank you, Your Honor. I have no further
18 questions.

19 THE COURT: Excuse me. Sorry, folks.

20 We will break, folks, for lunch until 1:15 at which time
21 we will have cross-examination.

22 (Jury not present.)

23 THE COURT: All right. Anything we need to discuss
24 before we break?

25 MR. SWEET: Nothing from the government, Your Honor.

1 MR. WEINERMAN: Nothing.

2 THE COURT: See everybody at 1:15. Thank you.

3 (Lunch recess taken.)

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C E R T I F I C A T E

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May 9, 2018

I certify, by signing below, that the foregoing is a true and correct **REDACTED** transcript of the record, taken by stenographic means, of the proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Jill L. Jessup, CSR, RMR, RDR, CRR, CRC

Official Court Reporter
Oregon CSR No. 98-0346

Signature Date: 5/9/18
CSR Expiration Date: 9/30/20